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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FCC 93-134

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In the Matter of)

Amendment to Part 61 of the)
Commission's Rules Requiring)
Metric Conversion of Tariff)
Publications and Supporting)
Information)

CC Docket No. 93-55 ✓

NOTICE OF PROPOSED RULEMAKING

Adopted: March 8, 1993 ; Released: April 8, 1993

Comment Date: May 26, 1993

Reply Comment Date: June 10, 1993

By the Commission:

I. INTRODUCTION

1. By this Notice, the Commission seeks to amend Part 61 of the rules regarding the filing of tariffs and supporting documentation to incorporate metric units of measurement. This proposed amendment advances the goal of the Metric Conversion Act¹ and acknowledges the increased use of metric units of measurement in this country. The Act establishes the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. Further, the Act, as amended, requires that certain federal agencies, not including the FCC, use the metric system in their procurements, grants, and other business-related activities, to the extent feasible, by September 30, 1992. Consistent with the goals of the Act, we propose to amend Part 61 by adding Section 61.37.

II. BACKGROUND

2. The Metric Conversion Act of 1975² declared a national policy that the metric system of measurement be employed wherever possible. The Act established a committee for metric policy development and coordination for the federal government, the Interagency Committee on Metric Policy (Interagency

¹ See Metric Conversion Act of 1975, Pub. L. 94-168, 89 Stat. 1007 (1975), as amended by Pub. L. 100-418, 102 Stat. 1107 (1988) (codified at 15 U.S.C. § 205 et. seq).

² Amended by Public Law 100-418, 100th Congress, H.R. 4848 (August 23, 1988).

Committee).³ That Committee has set a metric conversion policy for federal agencies through broad guidelines for carrying out federal responsibilities under the Act.

3. The Interagency Committee recommends that federal agencies support the goals of the national metric policy by ensuring: 1) that any of their regulations or requirements that are measurement-sensitive⁴ will accommodate the voluntary transition to use of the metric system; and 2) that the metric measurement expressions used are both meaningful and practical. The Act, as amended, specifies that complete conversion of appropriate rules and regulations for those agencies covered by this requirement be accomplished by September 30, 1992.

III. DISCUSSION

4. Although the Commission has been converting its rules to the metric system of measurement as the rules have been routinely updated, not all existing rules have been converted.

5. Part 61 of our rules does not contain units of measure that are measurement-sensitive, e.g., measures of distance (miles) or weights (pounds). However, Part 61 requires certain carriers to meet certain filing requirements for tariff filings and revisions. In complying with these tariff filing requirements, a carrier uses various measurement-sensitive units of measure that we believe should be subject to metric conversion. We believe that this conversion will advance the intent of Congress in establishing the national metric policy.

Proposed Rule

6. For the above reasons, the Commission proposes amending Part 61 of the rules by adding Section 61.37, Use of Metric Measurement, as set forth in Appendix A. In keeping with the recommendations and procedures outlined in the Metric Handbook For Federal Officials developed by the Interagency Committee, the Commission's proposed amendment offers the industry three options.⁵

³ The Interagency Committee is a committee composed of senior representatives of the 38 member federal agencies, including the FCC, that assist in formulating federal metric policies in consultation with the private sector.

⁴ A "measurement-sensitive" law, regulation, recordkeeping requirement or reporting requirement is one whose application or meaning depends substantially on some measured quantity. The mere presence of dimensions or measurement terms does not necessarily make an item "measurement-sensitive."

⁵ Specifically, the Handbook emphasizes that the acceptability of particular measurement units to a given industry or sector may not be apparent to an agency. The Handbook appears to recognize that all conversions may not be feasible. Therefore, it is important to ensure adequate opportunity for comments by any affected industries as well as the general public, on proposed

7. Generally, a carrier would be required to express measurement-sensitive information in a tariff publication in metric units. The first option would require a carrier to provide in the general rules section of a tariff publication, a table for converting non-metric units and corresponding rates to metric units.⁶ This option does not require that a metric unit or corresponding rate appear in the tariff or supporting information. The second option would allow the carrier to state in the applicable rate section of the tariff publication and in supporting information, the metric unit and corresponding rate in parenthesis beside the non-metric unit and rate. The third option would require a carrier to provide in its tariff a conversion table for converting non-metric units and corresponding rates into metric units and rates. Only the resulting metric unit and rate must be clearly shown in the tariff publication and in all supporting information filed with the Commission.

8. We recognize that any conversion to metric measure will impose some burden on carriers and their customers. Nevertheless, we tentatively believe that it would be consistent with the national metric policy that we place such burdens on carriers and customers. Our proposal to let carriers select from among three options how they will meet this obligation, should go far toward minimizing such burdens.

9. We recognize that option 1 may not go far enough promoting the nation's measurement units to metric. In addition, having multiple options may increase customer confusion. We therefore ask for comments on whether the public interest is best served by the optional approach we have proposed or whether it would be, on balance, better simply to mandate that only one of the options be employed by all carriers. We also request comment on whether there is some other metric conversion rule that would strike a better balance among the goals of encouraging metric conversion, reducing customer confusion and minimizing burdens on carriers and customers alike.

10. Compliance with the proposed rule need not require a special filing for implementation. We propose to allow carriers a period of two years to make the necessary conversions as they routinely file tariff revisions. We seek comment on whether this would ameliorate the burden on carriers and customers created by the conversion requirement. We believe that the larger carriers, classified as Tier 1 carriers, have the resources which should permit this conversion without undue burden. Moreover, they already compete in international markets which use the metric system of measurement. The first option offers smaller carriers a way to comply with the national metric policy with minimal burden.

11. Accordingly, we seek comments on this proposal from the affected industries as well as the general public.

changes in the use of measurement units.

⁶ For example, rates that are expressed in dollars and cents per mile would be stated in converted dollars and cents per kilometer.

IV. PROCEDURAL MATTERS

A. Ex parte Requirements

12. This is a non-restricted notice and comment rulemaking proceeding. Ex-parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission rules. See generally 47 C.F.R. §§ 1.1203, 1.1203, and 1.1206(a).

B. Regulatory Flexibility Act - Initial Analysis

13. Reason for action. The Commission is issuing this Notice of Proposed Rulemaking to make its rules consistent with the goals of the Metric Conversion Act of 1975, as amended.

14. Objective. The objective of this Notice of Proposed Rulemaking is to conform the Commission tariff reporting requirements to the metric conversion trends in the Nation.

15. Legal Basis. Sections 1, 4(i), 4(j), 201-205, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 303(r).

16. Description, potential impact, and number of small entities affected. The proposed rule would require metric information to be included in tariff transmittals. A carrier subject to tariff filing requirements must adopt one of three options to comply with this proposed rule. Conversion to metric measure will impose some burden on carriers and customers. However, carriers will be allowed to make the necessary conversions as they routinely file tariff revisions subject to a two year deadline for complete conversion. The definition of a "small entity" in Section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although local exchange companies do not qualify as small entities because they have a nationwide monopoly on ubiquitous access to the subscribers in their service area, we recognize that some small local exchange carriers may feel some economic impact due to the proposed rule. The Commission has found all exchange carriers to be dominant in the Competitive Carrier proceeding. 85 FCC 2d 1, 23-24 (1980). To the extent that small telephone carriers will be affected, option one limits any possible burden, minimizing the rule's effects for smaller carriers.

17. Reporting, recordkeeping, and other compliance requirements. The proposed rule will require carriers to provide a conversion table for determining the metric unit and corresponding rate, at a minimum, or to state the metric unit and corresponding rate simultaneously with the non-metric unit and rate in a more complex format. The proposed rule will not require a special filing for implementation and imposes no new recordkeeping requirements for either the minimum or more complex format.

18. Federal rules which overlap, duplicate, or conflict with the Commission's proposal. None.

19. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. The Notice of Proposed Rulemaking solicits comments on whether there is some other metric conversion rule that would strike a better balance among the goals of encouraging metric conversion, reducing customer confusion and minimizing burdens on carriers and customers alike.

20. Comments are solicited. We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines as comments on other issues in this Notice of Proposed Rulemaking, but must have a separate heading designating them as Responses to this Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. See 5 U.S.C. § 601, et seq.

V. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed rule amendment described above, and that COMMENT IS SOUGHT on this proposal.

22. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before May 26, 1993. Reply comments should be filed no later than June 10, 1993. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleadings with the Tariff Division, Common Carrier Bureau, Room 518, 1919 M Street, N.W., Washington, D.C. Parties should also file one copy of any documents filed in this docket with this Commission's copy contractor, International Transcription Service, Inc., 1919 M Street, N.W., Room 246, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Donna R. Searcy

Secretary

APPENDIX A

AMENDMENT TO THE CODE OF FEDERAL REGULATIONS

Part 61 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 61---TARIFFS

1. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.37 is added to read as follows:

Section 61.37 Use of Metric Measurement

All general rules, regulations, exceptions, conditions, and rates contained in a tariff publication and in supporting information that are measurement sensitive must employ one of the following options relating to the use of metric measurement. A carrier may employ only one option throughout all tariff publications and supporting information filed by that carrier.

A carrier may choose to provide a conversion table for converting non-metric units and corresponding rates to metric units and rates in the general rules section of a tariff publication.

A carrier may choose to state in the applicable rate section of the tariff publication and in supporting information, the metric unit and corresponding rate in parenthesis simultaneously with the non-metric unit and rate.

A carrier may choose to provide a conversion table for converting the non-metric units and corresponding rates contained in a tariff publication and in supporting information filed with the Commission to metric units and rates. The resulting metric unit and corresponding rate must be shown in the tariff publication and in the supporting information filed with the Commission.